
July 20, 2016

Request for Proposals

Town of Merrimack LED Street Lighting Conversion Project

The Town of Merrimack, NH, herein referred to as “the Town”, is seeking proposals from qualified, interested entities to submit a Scope of Work and Detailed Cost Proposal for the conversion of approximately 645 existing High Pressure Sodium (HPS) street lights to Light Emitting Diode (LED) street lights. The Scope of Work may be found on pages 4 through 8 of this Request for Proposal.

INSTRUCTIONS TO ENTITIES:

Proposals must be submitted with **three (3) printed copies** clearly marked “**LED Street Lighting Conversion Project**”. The names of those agencies that submit a proposal will be available within twenty four (24) hours of opening.

Proposals must be submitted, as outlined in the preceding paragraph, **no later than 2:00PM on Monday, August 15, 2016**, c/o Town of Merrimack Finance Department, Purchasing Agent, Xenia Simpson, 6 Baboosic Lake Road, Merrimack NH, 03054. Proposals must be submitted in the format provided and address the items specified in the proposal specifications. Postmarks or other timestamps will not be accepted in lieu of actual delivery. The firm can use whatever delivery mechanism it chooses as long as it remains clear that the firm is responsible for submissions prior to the date and time. The Town of Merrimack may reject any or all of the proposals on any basis and without disclosure of a reason.

Complete specifications and related documentation is available on our website, www.merrimacknh.gov, under Bids/RFPs. Related documentation includes: Schedule A, Cost Proposal Sheet Template; Schedule B, Merrimack Street Light Listing. The successful bidder must maintain insurance coverage as outlined in the contract, under Article 4 – Insurance and Indemnification.

The timeline for this RFP is as follows:

	Date	Time
<u>Mandatory</u> Pre-Bid Meeting	Friday, July 29, 2016	9:30 AM Public Works Conf Room Town Hall, Lower Level 6 Baboosic Lake Road Merrimack, NH 03054
Deadline for Entity Questions	Friday, August 5, 2016	3:00 PM
Answers/Clarifications Posted	Monday, August 8, 2016	3:00 PM
RFP Responses due	Monday, August 15, 2016	2:00 PM, Finance Department, Town Hall

Entities are encouraged to submit questions via email; however, the Town assumes no liability for ensuring accurate and complete email transmission/receipt and is not responsible to acknowledge receipt. Inquiries must be submitted in writing, citing the RFP title, Page, Section, and received no later than Friday, August 5, 2016 at 2:00PM:

Xenia Simpson, Purchasing Agent
6 Baboosic Lake Road
Merrimack, NH 03054
Email: xsimpson@merrimacknh.gov

The Town will consider all timely-received questions and requests for change and, if reasonable and appropriate, will issue an addendum to clarify or modify this RFP. Answers to Entity submitted questions and other addenda will be posted on the Town of Merrimack bidding webpage; www.merrimacknh.gov, under Bids/RFPs no later than Monday, August 8, 2016, at 2:00PM.

All bids are binding for sixty (60) days following the deadline for bids, or until the effective date of any resulting contract, whichever is later.

The successful bidder must maintain the following lines of coverage and policy limits for the duration of the contract. Any subcontractors used by the successful bidder are subject to the same coverage and limits and is a subcontractor of the successful bidder and not the Town of Merrimack. It is the responsibility of the successful bidder to update Certificates of Insurance during the term of the contract. Liability limits are as follows:

- General Liability:
 - \$1,000,000 per Occurrence
 - \$2,000,000 Aggregate
- Motor Vehicle Liability:
 - \$1,000,000 Combined Single Limit

Coverage must include all owned, non-owned and hired vehicles.

- Workers' Compensation Coverage According to Statute of the State of NH:
 - \$100,000 / \$500,000 / \$100,000

All bidders and subcontractors at every tier under the bidder will fully comply with NH RSA Chapter 281-A, "Workers Compensation". It is the responsibility of the CONTRACTOR to submit to the OWNER certificates of insurance for the Designer and all other subcontractors prior to the start of the project. It is the responsibility of the CONTRACTOR to provide the OWNER with updated certificates of insurance for the CONTRACTOR and all subcontractors a minimum of ten (10) days prior to the expiration of coverage. The OWNER may, at any time, order the CONTRACTOR to stop work, suspend the contract or terminate the contract for non-compliance. All subcontractors except for Designer are subject to the same insurance requirements as the CONTRACTOR.

The successful bidder will be required to post a 100% Performance Bond and a 100% Payment Bond in an amount equal to the Contract Award.

The Town is exempt of all taxes. All bids must be FOB Merrimack, NH. All bidders must comply with all Equal Opportunity laws and regulations.

Respectfully,

Xenia Simpson
Purchasing Agent
Town of Merrimack
xsimpson@merrimacknh.gov

TOWN OF MERRIMACK LED STREET LIGHTING CONVERSION PROJECT REQUEST FOR PROPOSALS

1. INTRODUCTION & BACKGROUND

The Town of Merrimack, NH (the Town) is soliciting proposals from qualified Entities to convert the Town's existing High Pressure Sodium (HPS) street lights to Light Emitting Diode (LED) street lights. The Entity will be expected to produce a turnkey project by implementing the conversion of all existing street lighting in the Town to equivalent LED street lights. The Entity will provide labor, materials, supplies, equipment, facilities, disposal, analysis, digital reports, and the filing of all utility company documentation for the processing of the utility bills under the new LED rate. It is the Town's goal to achieve electricity and cost savings, while simultaneously improving lighting quality throughout the Town.

2. OBJECTIVES

- Convert approximately 645 existing HPS street lights to LED street lights.
- Conduct a street light audit of all existing HPS street lights and develop a plan for the installation of the LED street light equivalents, in order to develop a consistent illumination standard for the Town while maximizing energy savings.
- Expedite the installation of approximately 140 LED fixtures in 2016
- Complete the installation of remaining 500 LED fixtures in 2017
- To establish safe street lighting standards while reducing the Town's energy consumption

3. SCOPE OF SERVICES

For informational purposes. Subject to change.

The Town of Merrimack LED Street Lighting Conversion Project (the "Project") will consist of, but is not limited to, the following work and services:

- 3.1** The selected Entity will provide product, labor, and all necessary related materials and supplies to replace approximately 640 roadway street lights (quantity detailed below).
- 3.2** The selected Entity will conduct a street light audit prior to commencing work.
- 3.3** The Town will provide the Entity with reasonable, secure, on site fixture storage for the duration of the project.
- 3.4** Installation will occur during normal, non-overtime, work hours.

In connection with each site, the Entity shall:

- 3.5** Work with the Town's main point of contact to develop an installation plan that minimizes inconvenience to the Town;
- 3.6** Provide appropriate temporary traffic control measures compliant with the Town of Merrimack Police Department; Cost of traffic control to be included in the installation labor unit cost per fixture;

3.6.1 Uniformed Officers must be used when working on the following streets:

Amherst Road	Continental Boulevard	Naticook Road	Turkey Hill Road
Baboosic Lake Road	Daniel Webster Highway	Peaslee Road	Wire Road
Back River Road	Joppa Road	Seaverns Bridge Road	Bedford Road
Manchester Street	Tinker Road		

3.6.2 Certified Flaggers may be used on remaining roads

- 3.7** Advise subcontractors on the interpretation of installation documents, and issue supplementary details and instructions in the event of any Change Order;
- 3.8** Verify all subcontractor's progress claim and final contractor invoices;
- 3.9** Identify infrastructure failure and provide a list of equipment at risk of failure in need of replacement (poles, brackets, underground services, service wires).
- 3.10** Provide all necessary wiring within new fixture;
- 3.11** Be responsible for verifying all circuit voltage;
- 3.12** Provide all required safety equipment, as well as a Safety Plan where required. Such Safety Plan shall include a traffic/construction plan to roadway usage during construction hours;
- 3.13** Provide reasonable progress reports to the Town at regular intervals and as reasonably requested by the Town;
- 3.14** Conduct site inspections, during construction, to ascertain that the Project is being executed in compliance of the approved construction documents and specifications;
- 3.15** Perform required product installation testing to ensure fixtures are installed correctly;
- 3.16** Contractor to submit work plan to Eversource detailing daily location of work activity; Contractor to coordinate installation work with Eversource;
- 3.17** Process all required paperwork, Eversource pole number locations, and inventory existing street lighting to update the Town's and Eversource GIS inventories using Eversource-supplied streetlight ledger in MS-Excel document;
- 3.18** Provide Eversource weekly reports to revise the rate schedule for the newly installed LED lights;
- 3.19** Provide all reasonable trade consumables (wire nuts, junctions boxes, covers and similar);
- 3.20** Provide "as-built" record documents of installed LED luminaires, including all applicable warranties, digital GIS data shape files, service, maintenance, and operations manuals, and similar information;
- 3.21** Prevent the areas of the Site in which the Project is occurring free from accumulation of waste materials or rubbish caused by the installation services;
- 3.22** Arrange for recycling or disposal of waste materials from the Project in accordance with Applicable State and Federal Laws;
- 3.23** Comply with all State and Federal laws and regulations, including wage, labor, OSHA requirements, and appropriate safety measures;

4. PRODUCTS

Minimum product specifications are as follows:

- 4.1 Products are Design Light Consortium approved.
- 4.2 Products and components are warrantied for a minimum of ten (10) years.
- 4.3 Products must be low cost, durable, and aesthetically pleasing. Entities may submit two (2) fixture “style” options.
- 4.4 Field adjustable lamps will not be allowed unless selected to operate at the highest allowable wattage.
- 4.5 Fixtures shall be approved by Eversource prior to installation and must be compatible with existing line voltage, brackets, and photoelectric controls; and must require no special tools or training to install and maintain.

Entities shall include a breakdown of products to replace the Town’s current street lights. See Section 7. “**SUBMITTAL REQUIREMENTS**” below for further details.

The Town’s current, approximate street light inventory is as follows:

	Current Fixture Qty.	Current Lumens	Current Lamp Watts
	425	4,000	50
	80	5,800	70
	65	9,500	100
	19	16,000	150
	45	30,000	250
	4	50,000	400
	6	130,000	1000
Total	644		

5. PROJECT COMMENCEMENT

No later than thirty (30) days following mutually agreed upon written schedule, purchase order, and the date of the notice to proceed.

6. FINAL COMPLETION

- 6.1 The first 145 lights (Contractor’s option) must be installed and accepted for service no later than November 15, 2016.
- 6.2 The remaining lights (500 +/-) and project in its entirety must be complete by September 1, 2017.

7. SUBMITTAL REQUIREMENTS

- 7.1** A **mandatory** pre-bid meeting will be held at 9:30 AM on Friday, July 29, 2016. Participants are to meet at the Public Works Department Conference Room, Town Hall Lower Level, 6 Baboosic Lake Road, Merrimack, NH 03054.
- 7.2** A description of the Entity's Information, Qualifications, and Experience including, but not limited to:
- 7.2.1** An Introductory letter, which includes the Entity's name, contact name, mailing address, telephone number, fax number, and email address. The letter will address the understanding of the service being requested and any other pertinent information the proposer believes should be included. The letter shall be signed by the individual authorized to bind the Entity to the proposal.
 - 7.2.2** The Entity must be licensed to do business in the State of New Hampshire at the time of the conversions/installations;
 - 7.2.3** Provide at least three (3) examples of similar type turnkey comparable projects. Include reference names and telephone numbers.
 - 7.2.4** Demonstrate your ability to provide qualified professionals for the project, such as Electrical Engineers, Installers, 24 hour service and support, and the ability to perform all work within the specified budget and within the required timeframe. Installers shall have all requisite training, certifications and insurance to safely perform the installations.
 - 7.2.5** Recommendations on the best process to implement the conversion in order to maximize utility savings immediately
 - 7.2.6** Provide names of individuals who will be responsible for the project along with a description of their roles, credentials, capabilities, past experience, and a listing of projects similar to this project. Highlight the principal who will be responsible for the project along with the project manager.
 - 7.2.7** Provide a conceptual schedule showing staffing, product procurement lead time, and proposed monthly minimum installation quotas.
 - 7.2.8** Contractor shall have all requisite training, certifications and insurance to safely perform the required installations; and shall be licensed to perform the work in New Hampshire and be accepted by Eversource.
- 7.3** A detailed Scope of Services and a detailed Cost Proposal, including, but not limited to:
- 7.3.1** The items outlined in the above sections.
 - 7.3.2** Product costs in total and on a per-fixture basis
 - 7.3.3** Installation (labor) costs in total and on a per-fixture basis
 - 7.3.4** Quantity of fixtures by wattage and fixture type
 - 7.3.5** Fixture lumens
 - 7.3.6** Fixture kW's
 - 7.3.7** Drive current (mA)
 - 7.3.8** Driver manufacturer
 - 7.3.9** Diode manufacturer

- 7.3.10** Proposed Kelvin Temperature (not to exceed 3000K)
- 7.3.11** Full compensation to the Entity to complete all work as described in this RFP, including, but not limited to investigation, analysis, construction, etc.
- 7.3.12** All costs associated with mobilization, demobilization, performance bonds, insurance, permits, inspections, environmental compliance and all else incidental shall be included in the detailed cost proposal.

Use “SCHEDULE B, Cost Proposal Sheet Template”.

Detailed Scope of Services and Cost Proposals shall be written on a company letterhead (input company name on Schedule B), dated, and signed by authorized company personnel. The Scope of Services and Cost Proposal may be negotiated with the selected Entity.

- 7.4.** Submissions – **Submit one (1) digital copy on cd or flash drive and three (3) printed copies** of the same of the Scope of Work and Detailed Cost Proposal in a sealed envelope(s) or package(s) clearly marked **“LED Street Lighting Conversion Project”** no later than Monday, August 15, 2016 at 2:00PM to Xenia Simpson, Purchasing Agent, Town of Merrimack, 6 Baboosic Lake Road, Merrimack, NH 03054.

8. EVALUATION PROCESS

Proposals shall be evaluated by specific criteria set forth in this RFP. All Proposals considered responsive shall be evaluated for completeness of data provided, support for all claims made, and the overall approach taken. The objective is to select an Entity, through the outlined evaluation process, whose Proposal is judged to be in the best interest of the Town of Merrimack.

The Town of Merrimack is not bound to accept the lowest priced Proposal if that Proposal is not in the best interest of the Town of Merrimack as determined by the Town of Merrimack. The Town of Merrimack reserves the right to accept or reject any and/or all bids, to waive any and/or all formalities, to clarify any discrepancies in the Proposal and to award a contract in the best interest of the Town of Merrimack.

Proposals may be evaluated using “best value” criteria including but not limited to:

- 8.1** Price/Project Cost
- 8.2** Reputation of the Entity and the Entity’s goods or services
- 8.3** Entity’s past relationships, if any, with the Town of Merrimack
- 8.4** Delivery dates and information
- 8.5** Business references
- 8.6** Any relevant factor that a private business would consider in selecting a contractor

9. INQUIRIES

Inquiries concerning this Request for Proposals shall be submitted in writing to Xenia Simpson, via email at xsimpson@merrimacknh.gov

Standard Form of Agreement Between Owner and Contractor

This agreement is made:

BETWEEN the Owner: **Town of Merrimack, New Hampshire
6 Baboosic Lake Road
Merrimack, NH 03054**

And the Contractor:

For the following Project: **LED Street Lighting Conversion Project**

ARTICLE 1 – THE CONTRACT DOCUMENTS

The Contractor shall complete the work described in the Contract Documents for this project. The documents consist of:

1. This Agreement signed by the Owner and Contractor, including the General Terms and Conditions;
2. Scope of Work;
3. Drawings and Specifications provided in the bid documents;
4. Change Order Form;
5. Insurance Certificate;
6. Written change orders for minor changes in the Work issued after execution of this Agreement; and
7. Fully Executed Town of Merrimack Purchase Order

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

ARTICLE 2 – PERIOD OF PERFORMANCE

The Contractor shall perform and complete all work within the time periods set forth. The time periods may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract. The Contractor shall begin performance upon receipt of an **Executed Contract**, a valid **Purchase Order** issued from the Owner, and a **Notice to Proceed**.

ARTICLE 3 – CONTRACT SUM

Subject to additions and deductions by Change Order, the Owner shall pay Contractor, in accordance with the Contract Documents, the Contract Sum of:

(\$)

The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

ARTICLE 4 – INSURANCE AND INDEMNIFICATION

Contractor shall carry and maintain in effect during the performance of services under this contract:

- General liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
- Motor Vehicle Liability: \$1,000,000 Combined Single Limit;

***Coverage must include all owned, non-owned and hired vehicles.**

- Workers' Compensation Coverage in compliance with the State of NH Statutes, \$100,000/\$500,000/\$100,000.

Contractor and subcontractors at every tier will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

*(Sole Proprietors **not** subject to Workers' Compensation requirements)*

Contractor shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by Contractor are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the contract. The Town of Merrimack shall not maintain any insurance on behalf of Contractor. Subcontractors are subject to the same insurance requirements as the Contractor and it shall be the Contractor's responsibility to ensure compliance of this requirement.

The parties agree that Contractor shall have the status of and shall perform all work under this contract as an independent contractor, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the Town and Contractor, and nothing in this contract shall create any contractual relationship between the Town and Contractor's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Contractor is not a Town employee and that there shall be no:

1. Withholding of income taxes by the Town;
2. Industrial insurance coverage provided by the Town;
3. Participation in group insurance plans which may be available to employees of the Town;
4. Participation or contributions by either the independent contractor or the Town to the public employee's retirement system;
5. Accumulation of vacation leave or sick leave provided by the Town;
6. Unemployment compensation coverage provided by the Town.

Contractor will provide the Town of Merrimack with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the Town issues the notice of award. The Town of Merrimack requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability and Auto Liability policies must name the Town of Merrimack as an additional insured and reflect on the certificate of insurance.** Contractor is responsible for filing updated certificates of insurance with the Town of Merrimack's Finance Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, Contractor must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve Contractor of its responsibilities or limit the amount of its liability to the Town or other persons, and Contractor is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the Town of Merrimack shall be called upon to contribute to a loss.
- Contractor is responsible for and required to remedy all damage or loss to any property, including property of the Town, caused in whole or part by Contractor or anyone employed, directed, or supervised by Contractor.

Regardless of any coverage provided by any insurance, Contractor agrees to indemnify and shall defend and hold harmless the Town, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Contractor's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

General Terms and Conditions

ARTICLE 5 – GENERAL PROVISIONS

1. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification.
2. The term “Work” means the construction and services required by the Contract Documents, and include all other labor, materials, equipment and services provided by the Contractor to fulfill the Contractor’s obligations.
3. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
4. In the case of a discrepancy, calculated dimensions will govern over scaled dimensions, Contract Drawings will govern over Standard Specifications, and Technical Specifications will govern over both Contract Drawings and Standard Specifications. In the case of a discrepancy between the Agreement and other Contract Documents, the more specific or stringent obligation or requirement to the benefit of the Owner shall take precedence.
5. The Contractor shall take no advantage of any apparent error or omission in the Contract Drawings or Technical Specifications, and the Engineer will be permitted to make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract Documents.

ARTICLE 6 – OWNER

1. Except for permits and fees, which are the responsibility of the Contractor under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges.
2. If the Contractor fails to correct Work that is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.
3. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to correct such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, a Change Order shall be issued deducting the cost of correction from payments due the Contractor.
4. The Owner reserves the right to perform construction or operations related to the project with the Owner’s own forces, and to award separate contracts in connection with other portions of the project.
5. The Contractor shall coordinate and cooperate with separate Contractors employed by the Owner.
6. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

ARTICLE 7 – CONTRACTOR

1. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
2. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Owner.
3. Within ten (10) days of notification of award, and prior to commencement of work, the Contractor shall obtain and forward to Owner a Performance Bond and a Payment Bond representing 100% of the contract work
4. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.
5. The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of subcontractors or suppliers for each portion of the Work. The Owner will promptly reply to the Contractor in writing if, after due investigation, he has reasonable objection to the subcontractors or suppliers listed.
6. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work.
7. The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.
8. The Contractor warrants to the Owner that (1) materials and equipment furnished under the contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.
9. The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.
10. The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.
11. The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances building codes, and rules and regulations without notice to the Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

12. The Contractor shall promptly review, approve in writing and submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.
13. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.
14. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
15. The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work.
16. Contractor warrants and guarantees to Owner, **for 1(one) year**, upon completion of work, that all Work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - Abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - Normal wear and tear under normal usage.
17. The Contractor shall bear all expenses related to damage to the Eversource electrical system caused by the Contractor's actions.

ARTICLE 8 – CHANGES IN THE WORK

1. After execution of the Contract, changes in the Work may be accomplished by Change Order or by order for a minor change in the Work. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
2. A Change Order shall be a written order to the Contractor signed by the Owner to change the Work, Contract Sum or Contract Time.
3. Change Order requests must include material and equipment cost plus labor with a profit margin of no more than 10%.
4. The Owner will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be written orders and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.
5. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment following authorization of the Owner to the charges.

ARTICLE 9 – TIME

1. Time limits stated in the Contract Documents are of the essence to the Contract.
2. If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other

causes beyond the Contractor's control, the Contract Time shall be extended by Change Order for such reasonable time as may be determined.

ARTICLE 10 – PAYMENTS AND COMPLETION

1. The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.
2. At least ten days before the date established for each progress payment, the Contractor shall submit an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner may reasonably require.
3. Application for Payment performed under this agreement shall be submitted directly to:

**Town of Merrimack
Public Works Department
6 Baboosic Lake Road
Merrimack, NH 03054
Attn: Kyle Fox, Director**

To facilitate the proper and timely payment of applications, the Town of Merrimack requires that all applications contain a valid **PURCHASE ORDER NUMBER**.

4. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.
5. OWNER shall make payments on the basis of Contractors Application for Payment, approximately **30** days from the time the **final** payment application is received by the Owner, depending upon the timing of submittals and approvals.
6. The Contractor shall promptly pay each Subcontractor and material supplier out of the amount paid to the Contractor on account of such entities' portion of the Work.
7. The Owner shall have no responsibility for the payment of money to a Subcontractor or material supplier.
8. An Application for Payment, a progress payment, or partial or entire use or occupancy of the project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.
9. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.
10. When the Work or designated portion thereof is substantially complete, the Contractor and Owner shall establish responsibilities for completion and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required

by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

11. Upon receipt of a final Application for Payment, the Owner will inspect the Work. When he finds the Work acceptable and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment.
12. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 11– RETAINAGE

1. There will be no retainage on this project.
- ~~2. The OWNER will retain a portion of the progress payment, each month, in accordance with the following procedures:~~
 - ~~a. The OWNER will establish an escrow account in the bank of the OWNER'S choosing. The account will be established such that interest on the principal will be paid to the CONTRACTOR. The principal will be the accumulated retainage paid into the account by the OWNER. The principal will be held by the bank, available only to the OWNER, until termination of the contract.~~
 - ~~b. Until the work is 50% complete, as determined by the ENGINEER, retainage shall be 10% of the monthly payments claimed. The computed amount of retainage will be deposited in the escrow account established above.~~
 - ~~c. After the work is 50% complete, and provided the CONTRACTOR has satisfied the ENGINEER in quality and timeliness of the work, and provided further that there is no specific cause for withholding additional retainage no further amount will be withheld. The escrow account will remain at the same balance throughout the remainder of the project.~~
- ~~3. Upon final completion and acceptance of the Work, OWNER shall hold 2% retainage during the 1 (one) year warranty period and release it only after the project has been accepted.~~

ARTICLE 12– PROTECTION OF PERSONS AND PROPERTY

1. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

ARTICLE 13 – CORRECTION OF WORK

1. The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected work.

2. In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.
3. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it and the Contractor shall reimburse the Owner for the cost of the correction.

ARTICLE 14 – PROHIBITED INTERESTS

Contractor shall not allow any officer or employee of the Town to have any indirect or direct interest in this contract or the proceeds of this contract. Contractor warrants that no officer or employee of the Town has any direct or indirect interest, whether contractual, non-contractual, financial or otherwise, in this contract or in the business of the Contractor. Contractor also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Contractor further warrants that no person having such an interest shall be employed in the performance of this contract. If any such interest comes to the attention of Contractor at any time, a full and complete disclosure of the interest shall be immediately made in writing to the Town. If the Town determines that a conflict exists and was not disclosed to the Town, it may terminate the contract at will or for cause.

ARTICLE 15 – TERMINATION OF THE CONTRACT

1. If the Owner fails to make payment when due or substantially breaches any other obligation of this Contract, following fifteen days' written notice to the Owner, the Contractor may terminate the Contract and recover from the Owner payment for work executed.
2. The Owner may terminate the contract for cause if the Contractor:
 - persistently or repeatedly refuses or fails to supply enough properly skilled workers;
 - fails to make payment(s) to Subcontractors for labor or materials in accordance with the respective agreements between the Contractor and Subcontractors;
 - disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
 - is otherwise guilty of a substantial breach of a provision of the Contract Documents.
3. If the Owner has decided to terminate the contract for cause, the Owner, without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, shall terminate the employment of the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient.
4. If the Contract has been terminated by the Owner for cause, the Contractor shall not be entitled to receive further payment until the work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, such excess shall be paid to the Contractor. If the cost of finishing the Work exceeds the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.
5. The Owner also has the right to terminate this Contract, in whole or in part, without cause, upon fifteen days' written notice. As of the date specified in the notice, Contractor shall stop all

performance under this Contract, except as otherwise directed by the Owner, provide the Owner with a list of all unperformed services, and take such action relative thereto as Contractor may be directed by the Owner. The Owner agrees to pay for all work that has been performed and equipment that has been installed or is on order and the order cannot be cancelled.

ARTICLE 16– MISCELLANEOUS PROVISIONS

- 1. Neither party to the Contract shall assign the Contract as a whole without written consent of the other.
- 2. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time.
- 3. If additional testing is required, the Contractor shall perform these tests.
- 4. The Owner shall pay for tests except for testing Work found to be defective for which the Contractor shall pay.
- 5. The Contract shall be governed exclusively by the law of the State of New Hampshire, and any litigation shall be brought in a court located in the State of New Hampshire.

Town of Merrimack (signature)

Contractor (signature)

(Printed Name and Title)

(Printed Name and Title)

Date

Date